

1 DALLAN A. LOUIS, Y78652  
 2 HQ 1A 209  
 3 California Correctional Institution  
 P.O. Box 1906  
 Tehachapi, CA 93581

4 Plaintiff, In Pro Se  
 5 DALLAN A. LOUIS

FILED  
 03 MAY 29 PM 2:25  
 RICHARD W. WICKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 DALLAN A. LOUIS,  
 12 Plaintiff,  
 13 v.  
 14 BUCKETT, et al,  
 15 Defendants.

NO 07 CV 6293 JSW (PR)

PLAINTIFF'S MOTION FOR RECONSIDERATION  
 OF ORDER DISMISSING DEFENDANT NEETH,  
 DATED APRIL 24, 2008, AND OR ALTERNATIVELY  
 FOR LEAVE TO ADD DEFENDANT

[Fed. R. Civ. P. 59(e), or 60(b)]

Complaint Filed: 12-12-07

16  
 17 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

18 The Plaintiff, DALLAN A. LOUIS, proceeding in Pro Se, and Informa Pauperis, is moved to submit the instant  
 19 motion for reconsideration of the court's manifestly unjust decision, and clear error in dismissing defendant  
 20 Neeth in its April 24, 2008 <sup>Order</sup> (See Appendix "A", Order dated 4-24-08), pursuant to Federal Rules of Civil  
 21 Procedure 59(e), and or 60(b), as defendant Neeth (along with the need to add as defendant Appeals  
 22 Coordinator John Doe) are indispensable parties to this claim, pursuant to Fed. R. C. P. 19. Had Neeth  
 23 not been erroneously dismissed with prejudice, liability would be imputed to both, due to the knowing in-  
 24 effectiveness of the complaint investigative process, wherein Plaintiff received "newly discovered evidence"  
 25 of the conclusion by the federal court appointed monitor special Master John Hugar in this court in Madrid  
 26 v. Tilton, C-96-3094 T.E. H., in a report released in January 2004 (See Exhibit "A" supporting Declaration,  
 27 "Judge Says He Will Monitor Prison Guards" at 2, last sect., and 3, first para, dated 11-18-04), that the discipli-




1 jury system in place within the Department is a hoax, with counterfeit investigations conducted,  
 2 intended to absolve the guards of wrongdoing, reflecting the morale / conduct of the guards (particu-  
 3 larly defendant Puckett's at issue in this action).

4 In light of this court's error dismissing the claim against Neeth with prejudice, instead of granting  
 5 this prose litigant leave requiring sufficient facts be alleged, there is a need to amend the complaint to  
 6 add additional facts to support his claim against defendant Neeth, and to add as defendant Appeals Coord-  
 7 inator John Dee (attached as Appendix B find Plaintiff's Proposed Amended Complaint).

8 This motion will be based on the attached declaration of Dallan A. Louis, the Memorandum of Points  
 9 and Authorities in support thereof, on the Proposed Amended Complaint, on the papers and records on file,  
 10 and such other evidence, oral or documentary as may be presented.

11 Dated: May 6, 2008

12   
 13 DALLAN A. LOUIS  
 14 Plaintiff, In Pro Se

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27  
 MOTION FOR RECONSIDERATION / ALT. FOR LEAVE TO ADD DFT.



1 Dallon A. Louis, V78658  
 HQ 1A 209  
 2 California Correctional Institution  
 P.O. Box 1906  
 3 Tehachapi, CA 93581  
 4 Plaintiff, In Pro Se  
 Dallon A. Louis  
 5  
 6  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10

11 Dallon A. Louis,  
 12 Plaintiff,  
 13 v.  
 14 Pockett, et al,  
 15 Defendants  
 16

NO. 07 CV 6293 JSW (PR)

DECLARATION OF DALLAN A. LOUIS  
 IN SUPPORT OF MOTION FOR RECONSIDERATION  
 OF ORDER DISMISSING DEFENDANT, AND  
 OR ALTERNATIVELY FOR LEAVE TO ADD  
 DEFENDANT

17 I, Dallon A. Louis, declare as follows:

18 1. I am the Plaintiff, proceeding in pro se in the above-entitled matter.

19 2. I had initially filed the complaint back in November 2007, wherein it was the  
 20 first complaint I had ever filed under 42 USC § 1983 Civil Right Act. Despite the fact  
 21 this court had made no effort to point out the deficiencies in the complaint prior to dismiss-  
 22 ing defendant Neeth, as required, and providing ~~me~~ me an opportunity to cure same.

23 3. Since receiving the court's order on about 5-4-08, I was furnished a copy of the  
 24 attached Exhibit A, Los Angeles Daily Journal article "Judge Says He Will Monitor Prison  
 25 Guards" (dated 11-18-04), which constitutes "newly discovered evidence," as I was not aware prior  
 26 that Federal investigations have been conducted/conducting that the disciplinary system  
 27 within the department was corrupted, with counterfeit investigations into complaints of



1 guard misconduct, which would go to support my claim against defendant Neeth, justifying  
 2 the grant of leave to amend the complaint to allege sufficient facts in the claim against  
 3 this defendant under respondent superior theory, whereas the Appeals Coordinator (John Doe)  
 4 is an indispensable party as his/her rights and obligations would be in question, as the failure  
 5 to provide the directors level with records of proper inquiry re the investigation of ~~the~~ my complaint  
 6 against Puckett, violated my due process, as the director was unable to affirm or reverse the  
 7 actions taken at the lower level as a result, showing that no investigation was actual con-  
 8 ducted.

9 4. The failure of the Administration (defendant Neeth) to enforce discipline on the guards,  
 10 by the ineffectiveness of the disciplinary system serves to sanction the guards actions/miscon-  
 11 duct, with an official acquiescence thereof, making defendant Neeth liable.

12 5. For the foregoing reasons my motion for reconsideration should be granted.

13 I declare under the penalty of perjury under the laws of the state of California  
 14 that the foregoing is true and correct executed this 6th day of May, 2008, at Tehachapi  
 15 California

By: D. Lewis  
 Dorian A. Lewis  
 Plaintiff in Pro Se

27 DECLAR. OF DAI IN SUPP. OF MOTION FOR RECONSIDERATION

**Exhibit A**



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ANGELES

# Journal

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ROBERT LEVINS / Daily Journal

regard a career  
Angeles Superior

Court Judge Wendy L. Kohn said of her mother, "Much of what I have accomplished has its roots in her lessons."

## ge Is Strictly Pro-Child

## Judge Says He Will Monitor Prison Guards

### Supervising Reforms Statewide Likely Will Cut Power of Union

### 'Broken to the Core'

By Pamela A. MacLean  
Daily Journal Staff Writer

SAN FRANCISCO — Calling the state's prison guard discipline system "broken to the core," U.S. District Judge Thelton Henderson took control of monitoring reform measures statewide Wednesday and sharply curtailed the power of the guards' union.

Issuing a sweeping order, Henderson nevertheless stopped short of his threat earlier this year to take over of the entire 162,000-inmate state corrections system and appoint a receiver to run the department.

Henderson dropped consideration of criminal contempt-of-court proceedings against former state prisons director Edward Alameda, citing Alameda's retirement and ill health and the lack of evidence that he had violated a court order.

Special Master



Kohn is not pro-Mom or pro-Dad, attorneys say. She's strictly pro-child.

She's very caring about the children," said attorney Ruth L. Ester of O'Neil & Molinar in Santa Monica. Her order starts child-centered as opposed to what might be convenient for a party.

"I really like the fact that she doesn't use children as pawns in these cases."

See Page 5 — LAWYERS

## Write-In Mayoral Votes

ally McPherson is calling seeking could be large. Ryer's lead had shrunk to 13,000 votes on provisional ballots.

20 deadline. The league recovered that ballots without does not know.

cast aside for the election law and oval only if of the election.

list be counted. person's name. for that pur-

the other cand-

The lawsuit wants a judge to order McPherson to count all votes for Ryer, no matter whether the oval is filled in or not.

All write-in ballots have been separated and can be easily reviewed under the proper procedure. The complaint states: *League of Women Voters v. McPherson*, GIC838890 (San Diego Super Ct. filed Nov. 17, 2004).

In addition, the complaint seeks a temporary restraining order and injunctions prohibiting McPherson from excluding from the final election results any ballots on which voters wrote the candidate's name but did not fill in the oval.

The suit also names as plaintiffs Bruce Reznick, described as a voter in the city of San Diego, and Jill Van Cleave, who said she wrote in Ryer's name in the Nov. 2 election but didn't fill in the oval.

The real parties in interest named by the lawsuit are City Council member Ryer and her opponents in the general election: incumbent Murphy and county Supervisor Ron Roberts.

See Page 5 — LEAGUE

The judge ordered special master John Hagar to investigate the powerful prison guards' union and determine whether contract terms or union conduct violate or interfere with court-ordered reforms of investigation of officers for alleged brutality. He also threatened to sanction the union for allegedly misleading the court.

In that portion of his order, Henderson told the California Correctional Peace Officers Association, the guards' union, to explain by Dec. 6 why the court should not sanction the union for an alleged attempt to mislead him in 2004 by claiming falsely that a guard contracted a dangerous bacterial infection at Pelican Bay State Prison.

Henderson's order Wednesday is the outgrowth of an investigation by Hagar into allegations that management bowed to pressure from the 29,000-member guards union to kill a 2003 perjury investigation of three officers and negotiate away control of use of force and discipline investigations.

### Pelican Bay

Henderson has overseen promised reforms at Pelican Bay State Prison ever since his 1995 decision that abuse of inmates and the failure to punish guards for the excesses had become so egregious at Pelican Bay that they violated inmates' constitutional rights, *Madrid v. Woodard*, C90-3094 (N.D. Cal. 1995).

Following Hagar's months-long investigation as well as five days of hearings with 20 witnesses, Henderson has concluded that discipline reforms at Pelican Bay cannot succeed without reform of the entire discipline process, starting with the Sacramento headquarters.

Hagar's report, in vivid and damning detail, documents that the [state

See Page 5 — JURIST

## Just Say No to Piracy

the department's Task Force on Intellectual Property, the mentioned but did not elaborate on the task force's recommendations for reaching students.

Among other things, the report suggested that the department develop a national education campaign on intellectual property.

The report noted, "Educating the public, and especially the youth of the nation, about intellectual property rights and responsibilities can be an effective method of deterring crime before it happens."

The report urged the department to develop for the 2005-06 school year an educational video on intellectual property that would be targeted at fifth- and sixth-grade students.

It also urged federal prosecutors to initiate local educational campaigns on intellectual property by making presentations or other methods that may appeal to students in the particular region.

On other intellectual property and entertain-

## Student Denies Firebombing SUVs Last Year

By John Ryan

Daily Journal Staff Writer

Caltech graduate student William Cottrell proclaimed his hatred of SUVs on the witness stand Wednesday, but he denied firebombing any vehicles during last year's arson attacks at San Gabriel Valley car dealerships.

"You think SUVs are evil, correct?" Assistant U.S. Attorney Beverly Reid-O'Connell, who is prosecuting Cottrell in Los Angeles federal court, asked in cross-examination.

"Yes, I think they're bad for the environment," Cottrell replied.

He insisted, however, that he opposed the arson, which he said was committed

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On the stand, Cottrell also admitted that he asked his friend, Claire Jacobs, to provide a fake alibi for him on the night of attacks.

He also conceded he offered to marry Jacobs, which would have prevented her from being forced to testify against him.

"Yeah, I considered that for a little bit," Cottrell said.

However, he also insisted that he told Jacobs that he only took part in the vandalism, contrary to the prosecution argument that he failed to make that distinction to his friends.

"In fact, I told her that several times," Cottrell said. "And, imagine that she told that to you guys."

Mayock and Reid-O'Connell are scheduled to give closing statements in the case today.

## Just Will Monitor State Prison Guard Reforms

(Continued from page 1)

Department of Corrections system for investigating and disciplining officers is broken to the core. Not only is the system dysfunctional from a managerial standpoint, but it is also subject to interference and obstruction from the CCPOA," Henderson wrote Wednesday.

In the order, Henderson expanded Hagar's assignment to monitor Pelican Bay discipline reforms. Now Hagar will monitor systemic reform for investigation and discipline policies for abusive officers statewide.

Henderson found that the state Department of Corrections deferred to the union in the investigation of guard misconduct and that terms of the union contract "may unduly interfere with the ability of the CDO to effectively investigate and discipline officers charged with such abuses."

Henderson ordered Pelican Bay officials to exclude the union from future executive review committee evaluations of excessive force complaints at the prison. The findings are intended to provide executives and the warden with an opportunity to discuss potential discipline candidly.

"Union attendance at the meetings is not necessary to protect the due process interests of correctional officers," the judge wrote.

The judge allowed the union to intervene in the *Madrid* case for the very limited purpose of participating in Hagar's review of whether the current contract violates the reforms in the case of force policies that began at Pelican Bay.

Responding to Henderson's order Wednesday, Union Vice President Lance Corcoran said the union is pleased that Henderson allowed it to defend our contract by intervening in the court case.

Corcoran said the meaning and extent of the contract provisions has been "grossly exaggerated by the management team, certain legislators and the Prison Law Office," which represents the inmates.

Corcoran said the contract terms were "born of abuses by managers."

He said officers should be able to see complaints filed against them by inmates. He also complained that relations with new Department of Corrections Director Rod Hickman "have deteriorated over the last year."

"They think it is not in their interest to talk to the union," Corcoran said.

Henderson also berated former state prisons director Edward Alameida for having "neither the will nor intent to effectively investigate and potentially discipline three Pelican Bay officers accused of the most serious of charges — suspected perjury in federal court to cover up excessive force by fellow officers."

Alameida instead "chose to shut down the investigations in order to appease the (union)," Henderson wrote.

Henderson said he reluctantly would not pursue criminal contempt of court punishment for Alameida, who retired in January 2004.

The judge did indicate he would seriously consider sanctions against Thomas Moore, the former head of the department's office of investigative services.

Moore must respond by Dec. 6 to Henderson's proposal regarding potential judicial sanctions.

Hagar found that Moore, who was responsible for internal affairs investigations, submitted a false letter to the court to mislead Henderson, "papering over" reasons for the aborted perjury investigation, according to the order.

Moore treated the plan to investigate alleged perjury by Pelican Bay Officers

William Jones, C.P. Matlock and Owen Tuttle in a criminal case against two former guards "as a sham which he never seriously attempted to follow."

"The court has no doubt that both Alameida and Moore engaged in gross abuses of the public trust," Henderson wrote.

The judge found that he could not pursue criminal contempt-of-court sanctions because Alameida and Moore were not specifically named as responsible parties in court orders and therefore did not violate a direct order.

Attorney Steve Fama, who represents the class of inmates in *Madrid*, said the most important aspects of the order were "making clear the court's concern about the union and that the union contract may be a barrier to the adequate remedy for the long-standing problems."

Henderson praised the progress on reforms instituted by Hickman, the new department head, appointed by Gov. Arnold Schwarzenegger.

Henderson pointed out that the Department of Corrections has embarked on several initiatives to create a discipline matrix adopted by the court last week that outlines for the first time a specific punishment to go with a specific violation by officers.

Hickman also launched programs to combat the "pervasive code of silence" and has created a Bureau of Internal Review to independently monitor the progress of internal affairs investigations.

Corrections spokeswoman Margot Bach said, "We are going to let the court's words speak for themselves. We are gratified the direction being taken by Secretary Hickman and Director [Jeanne] Woodford has been recognized."

Lawyers for Alameida and Moore did not return calls seeking comment.



1 Dallon A. Louis, V78658  
 2 401A 269  
 3 California Correctional Institution  
 4 P.O. Box 1906  
 5 Tehachas, CA 93581  
 6  
 7 Plaintiff, in Pro Se  
 8 Dallon A. Louis

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 Dallon A. Louis,  
 12 Plaintiff,  
 13 v.  
 14 Askeit, et al,  
 15 Defendants.

No. 07CV6293 JSW (PR)  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF HIS  
 MOTION FOR RECONSIDERATION

Complaint Filed: 12-12-07

17 Plaintiff Dallon Louis hereby submits his memorandum of points and authorities in support of  
 18 his motion for reconsideration of the order dismissing defendant Neeth, and or alternatively for leave  
 19 to add defendant.

20 STANDARD OF REVIEW

21 The Fed. Rules of Civil Procedure do not expressly provide for motions for reconsideration, however,  
 22 a motion for reconsideration may be construed as a motion to alter or amend judgment under Rule 59(e) or  
 23 Rule 60(h). see Osterweck v. Ernst & Whinney, 489 US 169, 174 (1989); In re Arrowhead Estates Development,  
 24 42 F.3d 1306, 1311 (9th Cir. 1994). Under Rule 59(e), "[r]econsideration is appropriate if the district court (1) is  
 25 presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly un-  
 26 just, or (3) if there is an intervening change in controlling law. There may also be other, highly unusual,  
 27 circumstances warranting reconsideration. School Dist No. 13 v. Arcads, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).



1 (citations omitted).


2 Here, Plaintiff is providing the court with "newly discovered evidence" (L.A. Daily Journal news article  
3 received from another prisoner litigant on 5-2-08) that the disciplinary system currently in place within  
4 the Department of Corrections is corrupted, and violated his due process, by failing to conduct an honest  
5 investigation of his complaint against defendant Puckett, holding defendant Neeth liable on a  
6 respondent superior theory, due to an official policy of counterfeiting investigations into the complaints  
7 of guard misconduct, serving as a sanction of the guards actions (particularly defendant Puckett's  
8 failure to follow regulations, taking it upon himself to resort to retaliation in violation of Plaintiff's  
9 First Amendment right, as Plaintiff otherwise would have received a CDC 128B, or 165, for any infraction  
10 he would have been accused of committing). Defendant Puckett's actions were clearly attributed to the  
11 ineffective disciplinary system in place.

12 Fed. Rules of Civil Procedure Rule 19, made it clear that all persons of material interest in the subject  
13 of the action should be joined as parties so that they may be heard if the rights and obligations of the  
14 persons whose joinder was in question. Here in this case the Appeals Coordinator (John Doe) played a crucial  
15 role determining the mode and mechanisms in place for initiating/conducting the investigation  
16 (which never occurred), and in providing the directors level with a showing that a proper inquiry  
17 took place/providing investigative records. Failure of defendant Neeth, and the Appeals Coordinator  
18 to do so violated Plaintiff's due process, holding both liable.

19 This court erred in dismissing defendant Neeth with prejudice, and without pointing out the  
20 deficiencies to Plaintiff (a pro se litigant), and allowing him the opportunity to cure same, aware of  
21 his inexperience in setting forth a sufficient factual basis, Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir.  
22 1987), citing to Nell v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). See also Gomez v. USAA Federal Savings Bank  
23 (1999) 171 F.3d 794, 795.

24 The naming of the Appeals Coordinator is necessary for shaping Plaintiff's, and the relief which  
25 he seeks, Miller & Lox, Inc. v. Nickel, 141 F. Supp. 41 (N.D. Cal. 1956), and there would be no way of  
26 resolving the entire dispute in the absence of this defendant.

27 Dated: May 6, 2008

  
Dallan A. Louis  
Plaintiff, In Pro Se

MEMO OF PLA'S IN SUPP. OF MOTION FOR RECONSIDERATION



# Appendix A

ORIGINAL  
FILED

APR 24 2008

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUIS A. DALLAN,

Plaintiff,

v.

PUCKETT, et al.,

Defendants.

No. C 07-6293 JSW (PR)

**ORDER OF SERVICE AND  
PARTIAL DISMISSAL;  
DIRECTING DEFENDANTS TO  
FILE DISPOSITIVE MOTION OR  
NOTICE THAT SUCH MOTION IS  
NOT WARRANTED**

**INTRODUCTION**

Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C § 1983. Plaintiff has also filed a motion to proceed *in forma pauperis*, which is GRANTED in a separate order. This Court now reviews the Complaint pursuant to 28 U.S.C. § 1915A and serves certain claims as set forth below.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).



1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:  
2 (1) that a right secured by the Constitution or laws of the United States was violated, and  
3 (2) that the alleged violation was committed by a person acting under the color of state  
4 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### 5 ANALYSIS

6 Plaintiff alleges that Defendant Puckett, a correctional officer at Salinas Valley  
7 State Prison where Plaintiff was formerly housed, withheld his incoming mail in  
8 “retaliation” for Plaintiff’s refusal to stand during a prisoner count. Liberally construed,  
9 this allegation states a cognizable claim for the violation of Plaintiff’s First Amendment  
10 rights. *See Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (providing that prisoners  
11 enjoy a First Amendment right to receive mail). Plaintiff’s allegations do not state a  
12 cognizable retaliation claim, however, because only retaliation for the exercise of a  
13 constitutional right is actionable under 42 U.S.C. § 1983. *See Mt. Healthy City Bd. of*  
14 *Educ. v. Doyle*, 429 U.S. 274, 283-84 (1977). There is no constitutional right to refuse to  
15 stand during a prison count.

16 In addition, Plaintiff’s allegations against Defendant Neott for failing to properly  
17 process his administrative appeals does not state a claim for the violation of Plaintiff’s  
18 constitutional rights. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding  
19 that there is no constitutional right to a prison administrative appeal or grievance  
20 system); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, the retaliation  
21 claim and the claims against Defendant Neott will be dismissed.

### 22 CONCLUSION

23 For the foregoing reasons, the Court orders as follows:

24 1. Plaintiff states a cognizable claim against Defendant Puckett for violating his  
25 First Amendment rights by withholding his legal mail. Plaintiff’s retaliation claims and  
26 his claims against Defendant Neott are DISMISSED. The Clerk shall TERMINATE  
27  
28

1 Defendant Neott them from this action.

2 2. The Clerk of the Court shall issue summons and the United States Marshal  
3 shall Clerk of the Court shall issue summons and the United States Marshal shall serve,  
4 without prepayment of fees, a copy of the Complaint and all attachments thereto, and a  
5 copy of this order upon: **Correctional Officer Puckett at Salinas Valley State Prison**  
6 **in Soledad, California.** The Clerk shall also mail a courtesy copy of the complaint, all  
7 attachments thereto, and this order to the California Attorney General's Office and serve  
8 a copy of this order on Plaintiff.

9 3. No later than **sixty (60) days** from the date of this order, Defendants shall  
10 either file a motion for summary judgment or other dispositive motion, or a notice to the  
11 Court that they are of the opinion that this matter cannot be resolved by dispositive  
12 motion. The motion shall be supported by adequate factual documentation and shall  
13 conform in all respects to Federal Rule of Civil Procedure 56.

14 a. If defendants elect to file a motion to dismiss on the grounds that plaintiff  
15 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),  
16 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to Wyatt v. Terhune,  
17 315 F.3d 1108, 1119-20 & n.4 (9th Cir. 2003).

18 b. Any motion for summary judgment shall be supported by adequate factual  
19 documentation and shall conform in all respects to Federal Rule of Civil Procedure 56.

20 **Defendants are advised that summary judgment cannot be granted, nor qualified**  
21 **immunity found, if material facts are in dispute. If any defendant is of the opinion that**  
22 **this case cannot be resolved by summary judgment, he shall so inform the Court prior to**  
23 **the date the summary judgment motion is due.**

24 All papers filed with the Court shall be promptly served on the Plaintiff.

25 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and  
26 served on defendants no later than **thirty (30) days** from the date defendants' motion is  
27  
28



1 filed.

2 a. In the event the defendants file an unenumerated motion to dismiss  
3 under Rule 12(b), plaintiff is hereby cautioned pursuant to *Wyatt v. Terhune*, 315 F.3d  
4 1108, 1119-20 & n.4 (9th Cir. 2003):

5 If defendants file an unenumerated motion to dismiss for failure to  
6 exhaust, they are seeking to have your case dismissed. If the motion is  
7 granted it will end your case.

8 You have the right to present any evidence you may have which  
9 tends to show that you did exhaust your administrative remedies. Such  
10 evidence may be in the form of declarations (statements signed under  
11 penalty of perjury) or authenticated documents, that is, documents  
12 accompanied by a declaration showing where they came from and why  
13 they are authentic, or other sworn papers, such as answers to  
14 interrogatories or depositions.

15 If defendants file a motion to dismiss and it is granted, your case  
16 will be dismissed and there will be no trial.

17 b. In the event defendants file a motion for summary judgment, the Ninth Circuit  
18 has held that the following notice should be given to plaintiffs:

19 The defendants have made a motion for summary judgment by which  
20 they seek to have your case dismissed. A motion for summary judgment under  
21 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for  
23 summary judgment. Generally, summary judgment must be granted when there  
24 is no genuine issue of material fact--that is, if there is no real dispute about any  
25 fact that would affect the result of your case, the party who asked for summary  
26 judgment is entitled to judgment as a matter of law, which will end your case.  
27 When a party you are suing makes a motion for summary judgment that is  
28 properly supported by declarations (or other sworn testimony), you cannot  
simply rely on what your complaint says. Instead, you must set out specific facts  
in declarations, depositions, answers to interrogatories, or authenticated  
documents, as provided in Rule 56(e), that contradict the facts shown in the  
defendants' declarations and documents and show that there is a genuine issue of  
material fact for trial. If you do not submit your own evidence in opposition,  
summary judgment, if appropriate, may be entered against you. If summary  
judgment is granted in favor of defendants, your case will be dismissed and there  
will be no trial.

23 See *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff is advised to read  
24 Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317  
25 (1986) (holding party opposing summary judgment must come forward with evidence showing  
26 triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that

1 failure to file an opposition to defendants' motion for summary judgment may be deemed to be a  
2 consent by plaintiff to the granting of the motion, and granting of judgment against plaintiff  
3 without a trial. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); *Brydges*  
4 *v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

5 5. Defendants shall file a reply brief no later than **fifteen (15) days** after plaintiff's  
6 opposition is filed.

7 6. The motion shall be deemed submitted as of the date the reply brief is due. No  
8 hearing will be held on the motion unless the Court so orders at a later date.

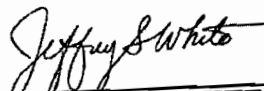
9 7. All communications by the plaintiff with the Court must be served on defendants, or  
10 defendants' counsel once counsel has been designated, by mailing a true copy of the document  
11 to defendants or defendants' counsel.

12 8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
13 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is  
14 required before the parties may conduct discovery.

15 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
16 informed of any change of address and must comply with the court's orders in a timely fashion.  
17 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
18 Federal Rule of Civil Procedure 41(b).

19 IT IS SO ORDERED.

20 DATED: April 24, 2008

21   
22 JEFFREY S. WHITE  
23 United States District Judge  
24  
25  
26  
27  
28



UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DALLAN LOUIS,

Plaintiff,

v.

PUCKETT et al,

Defendant.

Case Number: CV07-06293 JSW

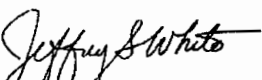
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dallan A. Louis  
P.O. Box 1906  
V78658  
Tehachapi, CA 93581

Dated: April 24, 2008

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk

## Appendix B



COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name Louis Dallan A  
(Last) (First) (Initial)

Prisoner Number V78658

Institutional Address California Correctional Institution, P.O. Box 1906, Tehachapi,  
CA 93581

=====

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Dallan A. Louis  
(Enter the full name of the  
plaintiff in this action)

Case No. 07CV 6293 JSW-PR  
(To be provided by the clerk  
of court)

vs.

Officer Puckett;

[PROPOSED] AMENDED  
COMPLAINT UNDER THE CIVIL  
RIGHTS ACT, 42 U.S.C § 1983

G. A. Neath (Chief Deputy Warden);

Appeals Coordinator (John Doe).

( ) DEMAND FOR JURY TRIAL  
(☒) NO JURY TRIAL DEMAND  
(check one only)

(Enter the full name of the  
defendant(s) in this action)

All questions on this complaint form must be answered in order  
for your action to proceed.

I. Exhaustion of Administrative Remedies

Note: You must exhaust your administrative remedies before  
your claim can go forward. The court will dismiss any  
unexhausted claims.

A. Place of present confinement California Correctional Institution - Tehachapi

B. Is there a grievance procedure in this institution?

YES ( ☒ ) NO ( ☐ )

C. Did you present the facts in your complaint for review through the grievance procedure? YES ( ☒ ) NO ( ☐ )

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal By passed (SVSP 06-D3833)

2. First formal level Partially granted - January 2, 2007

inquiry into allegations of staff misconduct supposedly conducted.

3. Second formal level Partially granted - February 1, 2007

inquiry into allegations of staff misconduct supposedly conducted.

(IAB no. 0616534)

4. Third formal level Appeal granted in part - September 20, 2007

Salinas Valley State Prison failed to provide the Directors level with completed copy of the inquiry conducted by institution, ordering prison to provide Appeals Branch report for review of the inquiry completed on this matter.

E. Is the last level to which you appealed the highest level of appeal available to you? YES ( ☒ ) NO ( ☐ )

F. If you did not present your claim for review through the grievance procedure, explain why. \_\_\_\_\_

## II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Ledes, Dallas, California Correctional Institution, P.O. Box 1406, Tehachapi, CA 93581



Write the full name of each defendant, his or her official position, and his or her place of employment.

B. Puckett, Correctional Officer, Solinas Valley State Prison, P.O. Box 1050, Soledad, CA 93960

G.A. Neeth, Chief Deputy Warden, Solinas Valley State Prison, P.O. Box 1050, Soledad, CA 93960

John Doe, Appeals Coordinator, Solinas Valley State Prison, P.O. Box 1050, Soledad, CA 93960

### III. Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

1. Plaintiff Louis alleges that on 12-4-06 defendant Puckett (a correctional officer employed at Solinas Valley State Prison) willfully and openly withheld his incoming mail in retaliation for Plaintiff not standing during counts.
2. Plaintiff alleges that the regulations would have required defendant Puckett to cite him with a CBC Form 128B, or IIS Rules Violation Report for any infraction he would have been accused of committing, although Puckett took it upon himself to resort to retaliation by ~~arbitrarily~~ withholding Plaintiff's mail, which Puckett accumulated in the staff's office within the housing unit.
3. Plaintiff alleges that his cellmate McManis, T71712, had returned from a duct on 12-4-06, and informed him that he had seen their mail as Puckett was sorting it out, although later on that day while passing it out Puckett provided neither Plaintiff nor his cellmate with theirs.
4. Plaintiff alleges that he inquired of Puckett the whereabouts of his mail at this time, after his cellmate had already confronted Puckett earlier that day, whereas Puckett asserted they wouldn't receive it until they began standing for counts. Plaintiff then "boarded up" his cell window to solicit Puckett's supervisors attention, at which time Puckett attempted to resolve the problem by furnishing Plaintiff his mail. Sgt. Jones responded and was informed of Puckett's actions, at which time Puckett went into the staff's office and returned with several articles of accumulated mail he had arbitrarily withheld from Plaintiff.
5. Plaintiff alleges that he had not received a CBC IIS for "boarding up" either, a showing of Administrative acquiescence of Puckett's misconduct, although defendant Neeth refused to

- conceded to the fact in response to Plaintiff's complaint against Puckett (Log SVSP 06-03933), where Neeth (as Chief Deputy Warden) refused to conduct a thorough/honest investigation, in an attempt to absolve Puckett of wrongdoing, despite revelation in a previous ~~report~~ federal report released in January 2004 by a court monitor, Special Master John Hagar, concluding that the disciplinary system for investigating complaints of staff misconduct throughout the Department of Corrections was corrupted, "broken to the core".
6. Plaintiff alleges that as a result of defendant Neeth's counterfeit investigation of his complaint, the director, at the 3rd Level Review, was unable to affirm or reverse the decisions at the lower level, as no documents were produced or existed showing that an actual inquiry was conducted by defendant Neeth, or the Appeals Coordinator (John Doe), violating Plaintiff's due process.
7. Plaintiff alleges that defendants Neeth, and Appeals Coordinators (John Does) disregard for the complaint process, and disciplinary system's purpose attributes to /and sanctions the guards misconduct, which shows such conduct to be official policy, despite rules and regulations.

#### IV. Relief

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

- Declaratory judgment that the disciplinary system, for the processing/investigation of complaints is still ineffective, despite the federal report released in January 2004 by special Master John Hagar.
- Punitive, and compensatory in the amount of \$10,000, for the emotional and mental anguish suffered.

DATED: 5-6-08

D. J. Davis  
(Plaintiff's signature)

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VERIFICATION

(optional)

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5-6-08

  
(Plaintiff's signature)

-----

JURY TRIAL DEMAND

(optional)

I demand a jury trial for all claims for which a jury trial is allowed.

YES ( ☒ )      NO ( ☐ ) (check one only)

Dated: 5-6-08

   
(Plaintiff's signature)



### Proof of Service by Mail

RE: LOUIS V. PUCKETT, et al  
USDC No 07CV6293 JSW-PR

I declare that:

1) I am a resident of California Correctional Institution in the county  
of kern, California.

2) I am over the age of 18 years.

3) My residence address is: 421A 209  
California Correctional Institution  
P.O. Box 1906  
Tehachapi, CA 93581

4) On May 6, 2008, I served the attached MOTION FOR RECONSIDERATION/OR ALT.  
FOR LEAVE TO ADD DFT.  
on the Attorney General's Office in said case by placing a true copy  
thereof, enclosed in a sealed envelope with postage thereon fully paid, in  
the United States mail at CCI addressed as follows:

ATTORNEY GENERAL OFFICE, 455 GOLDEN GATE AVE, STE. 11000,

SAN FRANCISCO, CA, 94102-3664

5) I declare under penalty of perjury under the laws of the State of California  
that the foregoing is true and correct, and that this declaration was  
executed on the 6th day of May, 20 08 at  
Tehachapi, California.

Dallan A. Louis

Type or Print Name

D. Louis

Signature